THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.137/2001

Shri Manohar V. Barad,
Sai Ram Housing Board,
Gogol, Vidyanagar, Margao, Goa. ..... Petitioner.

V/s.

1. Union of India,
(through Central Government
Standing Counsel);

2. Department of Railways

3. The Divisional Railway Manager,
South Central Railway, Hubli.

3. Presiding Officer
Labour Court, Junta House,
Panaji, Goa. ..... Respondents.

Mr. V.A. Lawande with Ms. H. Fernandes, Advocate for the Petitioner.

Mr. N.K. Sawaikar, Addl. Central Govt. Standing Counsel for the respondent No.1 - absent.

Mr. P.P. Singh, Advocate for respondents No.2 and 3.

CORAM : N.N. MHATRE, J.

DATE : FEBRUARY 13, 2004.

J U D G M E N T :

This petition impugns the order of the Labour Court passed under Section 33-C(2) of the Industrial Disputes Act. The application filed by the petitioner

has been dismissed on the ground that it suffers from inordinate delay and laches and because the petitioner has been unable to prove that he was entitled to a higher salary. As regards the maintainability of the application, the Labour Court has held that the application is maintainable.

2. The dispute arises in the following manner :

The petitioner was employed as Junior Clerk in S & M Railways on 23.9.1945. On 20.7.1954, he was appointed as Assistant Station Master and subsequently offered the post of Passenger Guide and thereafter, he worked as Ticket Collector. The post of Commercial Clerk and Assistant Station master were entitled to certain grades. Writ Petitions were preferred by Asst. Station Masters and Commercial Clerks in order to put at rest the anomaly which had crept into the two grades. The petitioner had filed Writ Petition No.3563/1974 in the Andhra Pradesh High Court for a direction to the Railways to fix the pay in a manner that it should not be less than the Junior Commercial Clerk, who was the petitioner's immediate junior. This petition was preferred by the petitioner after the Andhra Pradesh High Court had allowed Writ Petition No. 1153/1963

filed by some other employees similarly situated. The petitioners and others similarly situated filed several petitions before the Andhra Pradesh High Court claiming the same benefits as were paid to those who were covered by Writ Petition No.1153/1963. The Andhra Pradesh High Court observed thus :

> "Taking the facts and circumstances of the present case, we are inclined to hold that the delay here is not unreasonable. We have already extracted the main and principal circumstances of the case. The new deal was to be enforced from 1.4.1956, but the implementation began in 1958. It was not uniformly applied and so Writ Petition No.1153 of 1963 was filed by some employees. The judgment therein was rendered on 6.2.1968 granting the relief to the petitioners there. When that direction was not impemented a contempt case was filed in which the Railways took the stand that they were trying to implement the new deal and trying to work out the benefits that would be available to all the employees and that was the reason for the delay in implementation. Naturally, the present petitioners expected that when the scheme and its implications were fully worked out they would get the benefit. So they waited, and in our view waited on reasonable hopes. When no benefit was given to them, the employees began to file writ petitions from 1970 onwards. We find that from 1970 till 1974 these employees who are similarly situated like the petitioners in Writ Petition No.1153 of 1963 have been filing writ petitions. The present writ petitions belong to the same batch. This is how the delay has occurred and we cannot call this as unreasonable one. When the delay is not unreasonable, they are entitled to the relief granted to similarly situated employees in Writ Petition No.1153 of 1963,

> against which the Railways preferred an appeal which was unsuccessful and even the Supreme Court, Leave petition was dismissed. That is to say the decision that similarly situated employees are entitled to these reliefs, has become final. The Railways only attempt now is to deny them this benefit on the ground of laches. Since we are satisfied that the delay is reasonable in the present writ petitions, we have no hesitation to allow these petitions to grant to the petitioners same reliefs as were granted in W.P. No.1153 of 1963."

3. Being aggrieved by this Judgment of the Andhra Pradesh High Court in the various Writ Petitions, respondent No.1 herein preferred Special Leave Petitions before the Apex Court. These Civil Appeals and Special Leave Petitions were disposed of by the Apex Court by the Judgment in the case of Union of India and ors. vs. E. S. Soundara Rajan etc., AIR 1980 SC 959. The Apex Court while upholding the Judgment in the case which had been preferred against the Writ Petition No.1153/1963, did not approve of the reasonings in the subsequent Judgment which included the one in Writ Petition No.3563/1974, preferred by the petitioner along with other workers. However, at the time of disposing of these appeals, the Apex Court in paras (10) and (11), observed as follows :

> " 10. Pragmatism here again dictates the ultimate relief we propose to give.

> Assuming the clarification by the Andhra Pradesh High Court to be wrong and it is in the light of what we have stated above - an intricate calculation will have to be made about things of the long ago and a restructuring of the little benefits each one drew would have to be worked out. We do not think that this is worth the candle especially having regard to the fact that the employees belonging to the lower category and their emoluments are far from enviable.
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> 11. We, therefore, uphold the law as contended for by the Union of India, but decline to interfere with the cash results and emoluments that the employees/respondents have been held entitled to under the decisions of the Andhra Pradesh High Court and the Madras High Court. We dispose of the appeals and the special leave petitions as above. No costs. The Union of India will implement the directions given by the High Court concerned within six months from today."

4. Thus by this Judgment, the Union of India was directed to implement the directions given by the High Courts concerned within six months.

5. It appears that since Union of India did not bother to implement the orders and the decisions of the High Courts, contempt petitions were filed before the Andhra Pradesh High Court. A statement is made across the Bar today before me that an affidavit was filed in those contempt petitions (which was not produced before the Labour Court) averring that those who made representations to the Railways would be paid

the amounts after proper calculations. These contempt petitions were disposed of on 23.1.1981. Th petitioner obviously hoped that his travels would end after the Judgment of the Apex Court. However, his hopes were belied. The petitioner, therefore, filed an application under Section 33-C(2) of the Industrial Disputes Act on 17.2.1993 for recovery of dues. The petitioner contended that he was entitled to receive the difference in wages on account of the Judgment of the Andhra Pradesh High court as also pursuant to the directions passed by the Apex Court in the case reported in Union of India and ors. vs. E.S. Soundara Rajan etc. (supra). The petitioner also contended that one M.A. Zama was junior to him and was drawing a pay scale which was higher than that drawn by the petitioner. He further contended that the others who had been given benefits under the orders of the Andhra Pradesh High Court as well as the Supreme Court have benefited to the tune of Rs.1,00,000/- as minimum.

6. The respondents filed their written statement contending that the application was not maintainable and was liable to be rejected as there was no explanation for the delay of 14 years on the part of the petitioner in approaching the Labour Court. The

respondents also contended that whatever was due and payable to the petitioner under the New Deal Scheme had been paid to him and nothing more was due and payable. According to the respondents, the Judgments in the case of the Andhra Pradesh High Court and of the Apex Court were not applicable to the petitioner as he was not an Asstt. Station Master at the time when the Judgments were delivered.

7. The petitioner filed his calculations before the Labour Court on 19.3.1998. The petitioner also examined himself before the Labour Court. In his evidence, the petitioner deposed that one Mr. M.A. Zama was junior to him, but was drawing a higher salary. According to the petitioner, this was contrary to the Judgments of the Andhra Pradesh High Court as well as the Apex Court and, therefore, he was entitled to at least the same salary as that of Mr. Zama. However, the petitioner was not able to disclose as to what number Mr. Zama stood in the seniority list and what was the pay scale that Zama was entitled to receive. However, the petitioner has deposed that statement showing the salary and the difference which the petitioner was entitled to was calculated by him on the basis of information gathered. In his cross

examination, he has also stated that he had asked for authenticated documents from the respondents to verify the information gathered by him, while preparing the statement; but the same was denied.

8. Respondents No.1, 2 and 3 have chosen not to produce any evidence on record. They have not produced any documents nor has any witness deposed before the Labour Court in rebuttal. The respondents proceeded on the footing that whatever was pleaded by them in the written statement was to be considered as gospel truth.

9. The Labour Court by its Judgment dated 28.7.2000 has dismissed the application on the ground of delay and laches. The Labour Court has held that although the application under Section 33-C(2) was not barred by law of limitation, it suffers from inordinate delay and laches. According to the Labour Court, the cause of action in favour of the petitioner arose on 4.4.1979, when the Apex Court confirmed the Judgment of the Andhra Pradesh High Court. Therefore, by this reasoning, the Labour Court came to the conclusion that there was 13 years delay in approaching the Labour Court under Section 33-C(2) from the date when the Supreme

Court disposed of the Special Leave Petition. The Labour Court has not believed that the petitioner sent any representations to the respondents from 1979 onwards as the petitioner had not produced any acknowledgement from the respondents.

10. There is no doubt that there has been a delay on the part of the petitioner in approaching the Labour Court. Mr. Singh, appearing for respondents No.2 and 3, although does not urge that the application was barred by limitation, submits that the petitioner's claim is stale and the Labour Court was right in rejecting the application since the application was filed after a period of 13 years. He also submits that had the representations in fact been made by the petitioner, the respondents would have considered them in accordance with law.

11. The plea of delay is a wholly dishonest plea taken up by the respondents No.1, 2, 3. It is strange that even after the Judgment of the Supreme Court directing that the amounts payable under the Andhra Pradesh High Court decision were to be paid within six months, the respondents still expected each worker to approach them individually before making any

payment. In fact, some of the workers were driven to file a contempt petition which was disposed of in 1981 by the Andhra Pradesh High Court. Even thereafter, the respondents did not deem it fit to consider paying all the workers who were involved in the writ petitions on the specious plea that no representations were received. The claim of the petitioner is sought to be denied because, according to the respondents, he had not made any representation to them. Assuming that be so, the conduct of the respondents must be deprecated as they expected each worker to make an application for paying their legitimate dues. To deny the workers their dues on the basis of a technical plea raised by the Public Authorities is a conduct which the Apex Court in the case of Madras Port Trust vs. Hymanshu International, AIR 1979 SC 1144, has condemned in the strongest tone. The Apex Court has observed that it was high time that the Government/Public Authorities did not raise technical pleas for the purposes of defeating the legitimate claims of citizens. There is no doubt that there has been a delay in approaching the Labour Court. However, the delay has been explained sufficiently. The Judgment of the Andhra Pradesh High Court was delivered in 1975. The Supreme Court decided the Civil Applications and the SLPs arising out of the Judgment

delivered by the Andhra Pradesh High Court in 1979. Thereafter, it is obvious that the petitioner expected the respondents, being Public Authorities, to act as a model employer and pay the petitioner and other workers their dues, without having to approach the Court of law in another round of litigation.

12. In any event, the claim for the difference payable under the Judgment of the Apex Court cannot be denied to him merely because there was some delay in approaching the Labour Court. There is no question of limitation under Section 33-C(2) of the I.D. Act, and in my view, the delay has been sufficiently explained.

13. The Labour Court also found that the petitioner was not able to prove that he was entitled to the salary not less than the one drawn by his junior M.A. Zama. It also held that since the petitioner was not able to prove the salary drawn by him to be less than the amount of salary drawn by his junior, he could not be paid the difference in the amount from 1956 till the date of his retirement in the year 1980. The Labour Court proceeded on the footing that there was no evidence led before it to show that Zama was the petitioner's junior; that he was drawing a particular

salary and that the salary drawn by Zama was higher than that which was drawn by the petitioner. The Labour Court has not accepted the statement filed by the petitioner showing that an amount of Rs.43,373/- was due and payable to the petitioner. According to this calculation, Rs.26,471/- is the difference which could be payable to the petitioner as his emoluments from 1957 to 1980. He has also claimed the difference in DA as well as difference in pension. The total being Rs.43,471/-.

14. The respondents have not cared to deny or rebut this calculation either by filing their own calculations or by examining a witness in rebuttal. They have not bothered to counter the evidence of the petitioner that he was entitled to this amount as stated by him in the statement filed at Exhibit-A/4 before the Labour Court. The petitioner in his cross examination has stated on oath that despite he having sought for authenticated documents from the respondents to verify the information gathered by him, the respondents denied him any access to the documents. The respondents had in their possession the evidence of both, the petitioner's emoluments as well as the emoluments drawn by Zama. The best evidence was in possession of the respondents. It

was for them to produce this evidence and prove before the Court, once the petitioner had stated on oath that he was entitled to a particular sum, that the petitioner was not so entitled. As held in the case of Damodar valley Corporation vs. Workmen, reported in 1973 II LL.J. 136, the respondents cannot be said to be absolved from their duty to place all the necessary material before the Labour Court since the respondent had in their possession all information regarding the dispute. Not having done so, the respondents cannot draw capital out of such conduct. It is impossible that an individual worker would have at his command the entire record of the Railways in order to show that Zama was getting a particular amount which was higher than what he was drawing. Therefore, in my opinion, the Labour Court has erred in disallowing the application of the petitioner.

15. The amount due and payable to the petitioner i.e. Rs.26,471/- shall be paid to the petitioner as difference in the salary. All calculations in respect of D.A. and the difference in the pension will be made by the respondents and all dues payable to the petitioner shall be paid within a period of eight weeks from today. All amounts shall be paid to

the petitioner with interest quantified at 6 % per annum. Although I am inclined to grant a higher rate of interest in view of the deplorable conduct of the respondents, since the respondents are Public Authorities, I am confining it to at 6 % per annum.

Rule made absolute with costs.

NISHITA MHATRE,J.

ssm.